

By: Shapleigh

S.B. No. 1112

A BILL TO BE ENTITLED

AN ACT

relating to regulation of certain lending and finance practices.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 11, Finance Code, is amended by adding Section 11.308 to read as follows:

Sec. 11.308. DETERMINATION OF SUBPRIME LENDER; SUBPRIME LENDING REPORTS. (a) The finance commission shall annually determine the criteria for classification as a subprime lender. The finance commission may determine the classification as a subprime lender by referencing federal regulatory agency data.

(b) The finance commission shall determine the manner in which the finance commission must report information relating to the classification of subprime lenders.

SECTION 2. Section 342.005, Finance Code, is amended to read as follows:

Sec. 342.005. APPLICABILITY OF CHAPTER AND OTHER LAW.

(a) Except as provided by Sections 302.001(d) and 342.004(c), a loan is subject to this chapter if the loan:

(1) provides for interest in excess of 10 percent a year;

(2) is extended primarily for personal, family, or household use;

(3) is made by a person engaged in the business of making, arranging, or negotiating those types of loans; and

1 (4) either:

2 (A) is not secured by a lien on real property; or

3 (B) is described by Section 342.001(4), 342.301,
4 or 342.456 and is predominantly payable in monthly installments.

5 (b) A lender may not make a loan that is subject to this
6 chapter, other than a secondary mortgage loan, to a resident of this
7 state unless the loan complies with this chapter and all other state
8 law applicable to the loan, regardless of whether the lender is
9 located in this state. Notwithstanding Section 1.105, Business &
10 Commerce Code, or any other law, an agreement made in connection
11 with the loan is void to the extent the agreement:

12 (1) waives the application of this subsection; or

13 (2) applies the law of a jurisdiction other than this
14 state to the loan.

15 SECTION 3. Subchapter A, Chapter 342, Finance Code, is
16 amended by adding Section 342.010 to read as follows:

17 Sec. 342.010. ASSISTING DEFERRED PRESENTMENT TRANSACTION.

18 (a) A person may not assist in the creation of a deferred
19 presentment transaction between a lender and consumer at a rate or
20 amount of interest not authorized by this chapter, regardless of
21 whether the lender is subject to this chapter.

22 (b) Notwithstanding Section 1.105, Business & Commerce
23 Code, or any other state law, an agreement made in connection with a
24 deferred presentment transaction to which Subsection (a) applies is
25 void to the extent the agreement:

26 (1) waives the application of this section; or

27 (2) applies the law of a jurisdiction other than this

1 state to determine the permissible rate or amount of interest
2 applicable to the transaction.

3 (c) For the purposes of Chapter 349, a person who assists in
4 the creation of a deferred presentment transaction is considered to
5 contract for interest.

6 SECTION 4. Subchapter L, Chapter 342, Finance Code, is
7 amended by adding Section 342.561 to read as follows:

8 Sec. 342.561. ENFORCEMENT BY DISTRICT OR COUNTY ATTORNEY.

9 (a) On request of the commissioner, a district or county attorney
10 shall assist the commissioner in the institution and prosecution of
11 an action under this chapter or under Chapter 14 relating to a
12 violation of this chapter.

13 (b) A district or county attorney, after obtaining written
14 approval from the commissioner, may institute and prosecute an
15 action for declaratory judgment or injunctive relief under this
16 chapter. On request of the district or county attorney, the
17 commissioner may assist in the action.

18 (c) If the commissioner prevails in an action in which a
19 district or county attorney has participated under Subsection (a)
20 or if a district or county attorney is granted a declaratory
21 judgment or injunctive relief under Subsection (b), the court in
22 the action may order the defendant to pay the county in which the
23 action was instituted an amount necessary to cover the costs of
24 participation by the district or county attorney.

25 SECTION 5. Section 343.001(2), Finance Code, is amended to
26 read as follows:

27 (2) "Home loan" means a loan or retail installment

1 sales transaction that is:

2 (A) made to or entered into with one or more
3 individuals for personal, family, or household purposes; and

4 (B) secured in whole or part by:

5 (i) a manufactured home, as defined by
6 Section 347.002, used or to be used as the borrower's principal
7 residence; or

8 (ii) real property improved by a dwelling
9 designed for occupancy by four or fewer families and used or to be
10 used as the borrower's principal residence.

11 SECTION 6. Subchapter A, Chapter 343, Finance Code, is
12 amended by adding Sections 343.004 and 343.005 to read as follows:

13 Sec. 343.004. PROHIBITED SUBTERFUGE. A person may not
14 intentionally attempt to avoid the application of this chapter by
15 dividing a loan transaction into separate parts for that purpose or
16 by any other subterfuge.

17 Sec. 343.005. DECEPTIVE TRADE PRACTICE. A violation of
18 this chapter is a deceptive trade practice under Subchapter E,
19 Chapter 17, Business & Commerce Code.

20 SECTION 7. Section 343.101, Finance Code, is amended by
21 amending Subsection (b) and adding Subsection (c) to read as
22 follows:

23 (b) A lender may not replace or consolidate a low-rate home
24 loan [~~directly~~] made, originated, subsidized, or guaranteed by a
25 government or nonprofit lender [~~before the seventh anniversary of~~
26 ~~the date of the loan~~] unless the new or consolidated loan has a
27 lower interest rate and requires payment of a lesser amount of

1 points and fees than the original loan or is a restructure to avoid
2 foreclosure.

3 (c) A lender may not make a home loan to a borrower that
4 refinances an existing home loan if the new loan does not have
5 reasonable, tangible net benefit to the borrower considering all of
6 the circumstances, including the terms of both the new and
7 refinanced loans, the cost of the new loan, and the borrower's
8 circumstances. A home loan refinancing is presumed to violate this
9 subsection if the primary tangible benefit to the borrower is an
10 interest rate lower than the interest rate on debts satisfied or
11 refinanced in connection with the home loan, and it will take more
12 than four years for the borrower to recoup the costs of the points
13 and fees and other closing costs through savings resulting from the
14 lower interest rate.

15 SECTION 8. Sections 343.102 and 343.103, Finance Code, are
16 amended to read as follows:

17 Sec. 343.102. DISCLOSURE IN CONNECTION WITH CERTAIN HOME
18 LOANS. (a) For a home loan with an interest rate of 12 percent or
19 greater a year, not later than 48 hours before the date of closing
20 ~~[when the lender makes the disclosure required under the Real~~
21 ~~Estate Settlement Procedures Act of 1974 (12 U.S.C. Section 2601 et~~
22 ~~seq.), as amended, for the good faith estimate, or if that Act does~~
23 ~~not apply, three business days after the date the application is~~
24 ~~made], the lender shall [also] provide to the borrower:~~

25 (1) a statement regarding the value of mortgage
26 counseling before taking out a home loan;

27 (2) a list of the nearest available housing counseling

1 agencies approved by the United States Department of Housing and
2 Urban Development;

3 (3) a list of other resources where mortgage
4 information can be found, including toll-free telephone numbers and
5 online resources; ~~and~~

6 (4) a statement of the loan fees to be paid by the
7 borrower; and

8 (5) other disclosures required by the finance
9 commission, including an official notice regarding high-cost home
10 loans.

11 (b) A disclosure of fees under Subsection (a)(4) must be in
12 a form substantially similar to the documents that will be used for
13 the closing.

14 (c) If, before closing, the total amount of fees disclosed
15 under Subsection (a)(4) changes by an amount that exceeds the
16 lesser of \$400 or one-half percent of the amount of the loan, the
17 lender shall provide the borrower a written notice of the revised
18 amount. The loan may not be closed before 48 hours after the date of
19 the notice provided under this subsection.

20 (d) The borrower may modify or waive the waiting period
21 provided by this section, if the borrower determines that the loan
22 is needed to meet a personal financial emergency, by providing the
23 lender a dated, written, and signed statement that describes the
24 emergency and specifically modifies or waives the waiting period.
25 The statement under this subsection may not be on a form provided by
26 the lender or on the lender's behalf. [~~This section expires~~
27 September 1, 2003.]

1 Sec. 343.103. PENALTIES FOR FAILURE TO PROVIDE DISCLOSURE.

2 ~~[(a)]~~ A person who knowingly and wilfully violates Section 343.102
3 is liable to the aggrieved borrower for:

4 (1) the actual damages caused by the violation;

5 (2) punitive damages not to exceed \$10,000 in an
6 action brought by the aggrieved borrower; and

7 (3) court costs.

8 ~~[(b) This section expires September 1, 2003.]~~

9 SECTION 9. Subchapter B, Chapter 343, Finance Code, is
10 amended by adding Sections 343.105-343.112 to read as follows:

11 Sec. 343.105. RECOMMENDATION OF DEFAULT. A lender may not
12 recommend or encourage default on an existing loan or other debt
13 before and in connection with the closing or planned closing of a
14 home loan that refinances all or part of the existing loan or debt.

15 Sec. 343.106. LATE FEES. (a) A lender may not charge a
16 late payment fee unless:

17 (1) the fee does not exceed four percent of the amount
18 of the payment past due;

19 (2) the fee is assessed only for a payment past due for
20 15 days or more; and

21 (3) the fee is not charged more than once with respect
22 to a single late payment.

23 (b) If a late payment fee is deducted from a payment made on
24 the loan, and the deduction causes a default on a subsequent
25 payment, a late payment fee may not be imposed for that default.

26 (c) If a late payment fee has been imposed once with respect
27 to a particular late payment, a late payment fee may not be imposed

1 with respect to any future payment that would have been timely and
2 sufficient, but for the previous default.

3 (d) A late payment fee may not be charged unless the lender
4 notifies the borrower not later than the 45th day after the date the
5 payment was due that a late payment fee has been imposed for a
6 particular late payment. A late payment fee may not be collected
7 from a borrower who informs the lender that nonpayment of an
8 installment is in dispute and presents proof of payment not later
9 than the 45th day after the date of receipt of the lender's notice
10 of the late payment fee.

11 (e) The lender shall post each payment on the date it is
12 received by the lender, servicer, or lender's agent or at the
13 address provided to the borrower by the lender, servicer, or
14 lender's agent for making payments.

15 Sec. 343.107. ACCELERATION PROHIBITED. (a) A lender may
16 not include in a home loan a provision that permits the lender, in
17 the lender's sole discretion, to accelerate the indebtedness.

18 (b) This section does not prohibit acceleration of a loan in
19 good faith due to the borrower's failure to abide by the material
20 terms of the loan.

21 Sec. 343.108. LIMITATIONS ON FEES. A lender, in connection
22 with a home loan, may not charge a borrower an amount for a service
23 or product if:

24 (1) the borrower does not receive the service or
25 product; or

26 (2) the amount charged is 50 percent or more higher
27 than the reasonable and customary price in this state for that

1 service or product.

2 Sec. 343.109. FALSE, MISLEADING, OR DECEPTIVE STATEMENT OR
3 REPRESENTATION. A lender may not make or cause to be made, directly
4 or indirectly, a false, deceptive, or misleading statement or
5 representation in connection with a home loan. A statement or
6 representation is deceptive or misleading if it has the capacity or
7 tendency to deceive or mislead a borrower or potential borrower,
8 considering:

9 (1) the overall impression that the statement or
10 representation reasonably creates; and

11 (2) the particular type of audience to which the
12 statement or representation is directed and whether the statement
13 or representation may be reasonably comprehended by that audience.

14 Sec. 343.110. DOCUMENT WITH BLANKS. A home loan document in
15 which blanks are left to be filled in after it is signed by the
16 borrower is void.

17 Sec. 343.111. LANGUAGE OF DISCLOSURES. If the discussions
18 between the lender and the borrower on a home loan are conducted
19 primarily in a language other than English, before closing the
20 lender shall provide an additional copy of all information required
21 to be disclosed to the borrower under the Truth in Lending Act (15
22 U.S.C. Section 1601 et seq.), as amended, translated into the
23 language in which the discussions were conducted.

24 Sec. 343.112. ARBITRATION. A home loan may not include an
25 arbitration clause that:

26 (1) requires a borrower to travel to a location that is
27 more than 150 miles from the location where the loan agreement was

1 executed; or

2 (2) imposes fees or expenses considered excessive as
3 determined by rules adopted by the finance commission based on
4 recommendations made by the Office of Consumer Credit Commissioner.

5 SECTION 10. Section 343.201(1), Finance Code, is amended to
6 read as follows:

7 (1) "High-cost home loan" means a loan that:

8 (A) is made to one or more individuals for
9 personal, family, or household purposes;

10 (B) is secured in whole or part by:

11 (i) a manufactured home, as defined by
12 Section 347.002, used or to be used as the borrower's principal
13 residence; or

14 (ii) real property improved by a dwelling
15 designed for occupancy by four or fewer families and used or to be
16 used as the borrower's principal residence;

17 (C) has a principal amount equal to or less than
18 one-half of the maximum conventional loan amount for first
19 mortgages as established and adjusted by the Federal National
20 Mortgage Association;

21 (D) is not:

22 (i) a reverse mortgage; or

23 (ii) an open-end account, as defined by
24 Section 301.002; and

25 (E) is a credit transaction described by 12
26 C.F.R. Section 226.32, as amended, except that the term includes a
27 residential mortgage transaction, as defined by 12 C.F.R. Section

1 226.2, as amended, if the total loan amount is \$20,000 or more and:

2 (i) the interest rate for the loan exceeds
3 the applicable rate threshold provided by Section 343.2011 [~~annual~~
4 ~~percentage rate exceeds the rate indicated in 12 C.F.R. Section~~
5 ~~226.32(a)(1)(i), as amended~~]; or

6 (ii) the total points and fees payable by
7 the consumer at or before loan closing will exceed the amount
8 indicated in 12 C.F.R. Section 226.32(a)(1)(ii), as amended.

9 SECTION 11. Subchapter C, Chapter 343, Finance Code, is
10 amended by adding Section 343.2011 to read as follows:

11 Sec. 343.2011. RATE THRESHOLD. (a) For the purposes of
12 Section 343.201(1)(E)(i), the rate threshold is exceeded if:

13 (1) for a first lien mortgage loan, the trigger rate
14 computed as provided by Subsection (b) is six or more percentage
15 points over the weekly average yield on five-year United States
16 Treasury securities; and

17 (2) for a subordinate mortgage lien or a mortgage
18 secured solely by a security interest in a manufactured home, the
19 trigger rate computed as provided by Subsection (b) is eight or more
20 percentage points over the weekly average yield on five-year United
21 States Treasury securities.

22 (b) The trigger rate is computed as follows:

23 (1) for a loan in which the interest rate will not vary
24 during the term of the loan, the trigger rate is the rate as of the
25 date of closing;

26 (2) for a loan in which the interest varies according
27 to an index, the trigger rate is the sum of the index rate as of the

1 date of loan closing plus the maximum margin permitted at any time
2 under the loan agreement; and

3 (3) for all other loans in which the rate may vary at
4 any time during the term of the loan, the trigger rate is the
5 maximum rate that may be charged during the term of the loan.

6 (c) For the purposes of this section, the interest rate used
7 to calculate the rate threshold refers to the annual percentage
8 rate, calculated according to the provisions of 15 U.S.C. Section
9 1606, the regulations promulgated thereunder by the Board of
10 Governors of the Federal Reserve System, and the Official Staff
11 Commentary on Regulation Z published by the Board of Governors of
12 the Federal Reserve System.

13 SECTION 12. Section 343.202, Finance Code, is amended to
14 read as follows:

15 Sec. 343.202. BALLOON PAYMENT. A high-cost home loan may
16 not contain a provision for a scheduled payment that is more than
17 twice as large as the average of earlier scheduled monthly
18 payments, unless the balloon payment becomes due not less than 15
19 years [~~60 months~~] after the date of the loan. This prohibition does
20 not apply if the payment schedule is adjusted to account for the
21 seasonal or otherwise irregular income of the borrower or if the
22 loan is a bridge loan in connection with the acquisition or
23 construction of a dwelling intended to become the borrower's
24 principal dwelling.

25 SECTION 13. Subchapter C, Chapter 343, Finance Code, is
26 amended by adding Sections 343.206-343.211 to read as follows:

27 Sec. 343.206. LENDING WITHOUT COUNSELING PROHIBITED. A

1 lender may not make a high-cost home loan without first receiving
2 certification from a counselor approved by the United States
3 Department of Housing and Urban Development, the finance
4 commission, or a regulatory agency that has jurisdiction over the
5 lender, that the borrower has received counseling on the
6 advisability of the loan transaction.

7 Sec. 343.207. REFINANCING WITH HIGH-COST HOME LOAN
8 PROHIBITED. A high-cost home loan may not be refinanced with
9 another high-cost home loan.

10 Sec. 343.208. MAKING HIGH-COST HOME LOAN WITHOUT REGARD TO
11 CREDITWORTHINESS. A lender may not make a high-cost home loan to a
12 borrower if, under the lender's usual lending practices, the lender
13 would make a home loan that is not a high-cost home loan to another
14 borrower of comparable creditworthiness.

15 Sec. 343.209. INCREASED INTEREST RATE PROHIBITED. (a) A
16 lender may not include in a high-cost home loan a provision that
17 increases the interest rate after default.

18 (b) This section does not apply to an interest rate change
19 in a variable rate loan otherwise consistent with the loan
20 documents, if the change is not triggered by the event of default or
21 the acceleration of the indebtedness.

22 Sec. 343.210. MODIFICATION OR DEFERRAL FEES PROHIBITED. A
23 lender may not charge a borrower to modify, renew, extend, or amend
24 a high-cost home loan or to defer any payment due under the terms of
25 a high-cost home loan.

26 Sec. 343.211. ARBITRATION. A high-cost home loan may not
27 include an arbitration clause that is oppressive or unfair as

1 determined by rules adopted by the finance commission based on
2 recommendations made by the Office of Consumer Credit Commissioner.

3 SECTION 14. (a) Except as provided by Subsection (b) of
4 this section, the changes in law made by this Act to Chapter 343,
5 Finance Code, apply only to a loan closed or a retail installment
6 sales transaction entered into on or after the effective date of
7 this Act. A loan closed or a retail installment sales transaction
8 entered into before the effective date of this Act is governed by
9 the law in effect when the loan was closed or the transaction was
10 entered into, and the former law is continued in effect for that
11 purpose.

12 (b) Sections 343.112(2) and 343.211, Finance Code, as added
13 by this Act, apply only to a loan closed on or after January 1, 2004.

14 (c) Not later than January 1, 2004, the Finance Commission
15 of Texas shall adopt rules to implement Sections 343.112(2) and
16 343.211, Finance Code, as added by this Act.

17 SECTION 15. This Act takes effect September 1, 2003.